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Letters to The Times

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Air Space Rights Discussed

Defense of U-2 Flights on Basis of Effective Control Questioned

The writer of the following letter, an authority on Soviet law, is Professor of Law at Harvard. He recently published an introduction to "The Trial of the U-2," a book containing the verbatim transcript of the record of the Powers trial.

TO THE EDITOR OF THE NEW YORK TIMES:

Arthur Dean concludes, in his letter published Oct. 23 that a good defense of the U-2 flights can be made under international law, on the ground that they were at a height beyond the limits of effective control by Soviet air or missile power. This seems to me to be fallacious on three grounds.

The boundary of "effective control" must be set not by the height which Soviet anti-aircraft rockets can reach but by the height which any anti-aircraft rockets can reach. Assuming that the United States can shoot down aircraft at 100,000 feet, all states are protected against aerial intrusion at that level. Otherwise one is led to the absurd conclusion that a country which has no anti-aircraft defenses at all therefore has no sovereignty over the air space above its territory.

Second, if a country has a right, under international law, to send reconnaissance aircraft over another country's territory at a height beyond the reach of its anti-aircraft defenses, the country over which the aircraft is sent is placed in a very peculiar legal situation.

Test of Sovereignty

Should the reconnaissance plane

Mr. Dean assumes happened in the case of the U-2 flight, it could not legally be attacked. One is led to the absurd conclusion that the Soviet Union violated international law in failing to give a safe haven to a foreign plane that was taking photographs of its military installations.

Finally, the doctrine of effective control is not the only test of sovereignty in air space. It may be a useful doctrine in determining the question of rights in outer space, that is, in areas which are so remote from the earth's surface that it makes little sense to think of them as being directly above any particular country.

It was with reference to outer space that the contentions of Soviet jurists, which Mr. Dean cited, were made.

The annihilation of space has not gone so far, however, that we can afford to eliminate national rights in air space into which enemy planes can fly and drop bombs—whether or not such flights are above the limits of effective control.

Does Mr. Dean suggest that the language of the 1944 Chicago Convention and of the 1919 Paris Convention that each state exercises sovereignty in the air space above its territory offers no legal basis for protesting flights of Soviet reconnaissance planes or bombers over West Germany or Latin America or the United States at heights beyond the reach of our air or missile power?

HAROLD J. BERMAN.
Cambridge, Mass., Oct. 28, 1960.